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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0235**

In the Matter of the Welfare of: C. M. S., Child.

**Filed August 20, 2018  
Affirmed  
Johnson, Judge**

Ramsey County District Court  
File No. 62-JV-17-1544

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant child)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Johnson, Judge.

**UNPUBLISHED OPINION**

**JOHNSON, Judge**

C.M.S. is a 17-year-old boy who is charged with two counts of first-degree criminal sexual conduct, two counts of kidnapping, and four counts of first-degree aggravated robbery. The complaint alleges that, when he was 16 years old, C.M.S. and a group of companions forced two female teenagers to engage in sexual acts at gunpoint. The juvenile court granted the state's motion to certify C.M.S. for prosecution as an adult. We affirm.

## FACTS

At approximately 2:00 a.m. on June 6, 2017, two female teenagers, whom we will call A.M. (who was 17 years old) and A.J. (who had just turned 18 years old), were at Harriet Island in the city of St. Paul with two male friends, J.D. (who was 15 years old) and J.S. (who was 16 years old). The female teenagers and their male friends had driven to Harriet Island with some food. While they were eating, C.M.S. and a group of four to five males walked by. J.S. recognized C.M.S. (who was 16 years old) as a student at his high school, so he and J.D. approached C.M.S. and his companions. After they engaged in a brief conversation, J.S. and J.D. began to walk back toward the two female teenagers.

As J.S. and J.D. were walking back, C.M.S. and three male companions (D.A.E., V.J.H., and D.J.V., whose ages ranged from 18 to 20) approached them in a hostile manner. C.M.S. brandished a small silver gun and pointed it at the four teenagers. C.M.S. and his companions forced them to hand over their cell phones and cash. C.M.S. forced the two boys at gunpoint to strip to their underwear and lie face down in the grass. C.M.S. grabbed A.M. by her hair, put the gun to her head, and forced her into the back seat of the teenagers' car. Once inside the car, C.M.S. pointed the gun at A.M.'s chest and forced her to remove all of her clothing. He forcibly inserted his penis into her mouth. D.J.V. opened the car door and said, "Let her do that to me, it's my turn." D.J.V. got into the back seat and forcibly inserted his penis into A.M.'s mouth. Meanwhile, C.M.S. got out of the car and forced A.J. into the front seat of the car, forced her to remove all her clothing, and forcibly inserted his penis into her vagina. When D.J.V. got out of the back seat, C.M.S. went to the back seat and again forcibly inserted his penis into A.M.'s mouth. C.M.S. pulled A.M.

out of the car and inserted his penis into her vagina. Then D.J.V. forcibly inserted his penis into A.J.'s mouth. C.M.S. and his companions forced the four teenagers into their car, threw the teenagers' car key into the bushes, threatened that someone would shoot them if they left within 20 minutes, and fled.

The state charged C.M.S. in juvenile court with two counts of first-degree criminal sexual conduct while armed with a dangerous weapon, in violation of Minn. Stat. § 609.342, subd. 1(d) (2016); two counts of kidnapping, in violation of Minn. Stat. § 609.25, subd. 1(2) (2016); and four counts of first-degree aggravated robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2016).

The state promptly moved to certify C.M.S. for prosecution as an adult. The juvenile court conducted a certification hearing on three days in December 2017. The state called two witnesses: Rebecca Jorgensen, a court-appointed licensed psychologist, and Ken Barber, a juvenile probation officer. C.M.S. called two witnesses: Gerald Henkel-Johnson, a licensed psychologist, and L.S., C.M.S.'s grandmother. In January 2018, the juvenile court granted the state's motion and certified C.M.S. for prosecution as an adult. C.M.S. appeals.

## **D E C I S I O N**

C.M.S. argues that the district court erred by granting the state's motion to certify him for prosecution as an adult.

The general rule is that children accused of criminal conduct are tried in the juvenile division of the district courts. Minn. Stat. § 260B.101, subd. 1 (2016). But a child who is 14 years old or older may be certified for prosecution as an adult in district court. Minn.

Stat. § 260B.125, subd. 1 (2016). If a child is alleged to have committed an offense that would result in a presumptive commitment to prison if the child were an adult, and if the child is 16 or 17 years of age at the time of the alleged offense, certification is presumed. *Id.* § 260B.125, subd. 3. “In presumptive-certification proceedings, the state bears the burden of showing that (1) the juvenile was 16 or 17 years old, and (2) the alleged offense carries a presumptive prison sentence or that it is a felony offense involving a firearm.” *In re Welfare of P.C.T.*, 823 N.W.2d 676, 681 (Minn. App. 2012), *review denied* (Minn. Feb. 19, 2013). If the state carries its burden on those two issues, the juvenile bears the burden of proving “by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety.” Minn. Stat. § 260B.125, subd. 3 (last paragraph); *see also* Minn. R. Juv. Delinq. P. 18.06, subd. 1. If the juvenile satisfies his burden, the juvenile court retains jurisdiction in an extended-jurisdiction juvenile (EJJ) prosecution. Minn. Stat. § 260B.125, subd. 8(b); *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014).

In determining whether a juvenile should be certified for adult prosecution, a juvenile court must consider the following six factors:

- (1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;
- (2) the culpability of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
- (3) the child’s prior record of delinquency;

(4) the child’s programming history, including the child’s past willingness to participate meaningfully in available programming;

(5) the adequacy of the punishment or programming available in the juvenile justice system; and

(6) the dispositional options available for the child.

Minn. Stat. § 260B.125, subd. 4. A juvenile court must give greater weight to the first and third factors. *Id.*

The juvenile court “has considerable latitude in deciding whether to certify a case for adult prosecution.” *P.C.T.*, 823 N.W.2d at 681 (quotation omitted). This court applies a clear-error standard of review to a juvenile court’s findings of fact. *J.H.*, 844 N.W.2d at 34-35. “A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *Id.* at 35 (quotation omitted). This court applies an abuse-of-discretion standard of review to a juvenile court’s ultimate certification decision. *In re Welfare of N.J.S.*, 753 N.W.2d 704, 710-11 (Minn. 2008); *In re Welfare of U.S.*, 612 N.W.2d 192, 195 (Minn. App. 2000).

In this case, the juvenile court found that four of the six factors favor certification. The juvenile court found that the first factor favors certification because “th[e] offense was violent and cruel,” “[t]he victims were randomly selected and held at gunpoint,” and “the sexual assaults were not typical juvenile sex offenses.” The juvenile court found that the second factor favors certification because C.M.S.’s “culpability was significantly higher than the other suspects” and “no factors . . . mitigate his culpability.” The juvenile court

found that the third factor favors an EJJ designation because C.M.S.’s prior record of delinquency includes only a runaway petition and a fleeing-a-police-officer-on-foot petition. The juvenile court found that the fourth factor favors an EJJ designation because C.M.S.’s “programming history . . . is limited.” The juvenile court found that the fifth factor favors certification because the punishment or programming available in the juvenile justice system is inadequate to treat C.M.S. “given the level of . . . violence involved in these crimes” and inadequate “to address [his] behavior.” The juvenile court found that the sixth factor favors certification because certification “would provide some correctional supervision for the remainder of [C.M.S.’s] life” and “that a longer period of incarceration and supervision . . . best serves public safety.” The juvenile court found that, overall, “the weight of the evidence demonstrates that public safety is best served by certification to adult court.” The juvenile court concluded that C.M.S. did not “show by clear and convincing evidence that public safety is served by retaining the proceedings in the juvenile system under an Extended Jurisdiction Juvenile designation.” Accordingly, the juvenile court granted the state’s motion.

On appeal, C.M.S. makes two arguments, which we address in turn below.

#### A.

C.M.S. argues that the juvenile court erred by placing too much weight on evidence that C.M.S. was not sufficiently motivated to participate in juvenile treatment. He contends that the juvenile court’s “conclusion that [he] was poorly motivated to change appears to be a superficial description of a symptom—not an intentional posture adopted by” him. C.M.S. does not specifically identify the portion of the juvenile court’s order that he is

challenging, but he appears to refer to the juvenile court's analysis of the fifth factor, in which the juvenile court stated, "it is telling that even Henkel-Johnson testified that [C.M.S.] '*is minimally motivated for treatment at this time.*'"

Henkel-Johnson testified generally in support of C.M.S.'s position that the state's certification motion should be denied. Henkel-Johnson testified that, based on the psychological and personality tests he administered, five of the six factors favored an EJJ designation. He testified that there is a short "window of opportunity" at the present time to rehabilitate C.M.S. through treatment programs in the juvenile justice system, which would benefit public safety in the long term. But he also testified on cross-examination that C.M.S. was "minimally motivated" to engage in treatment and that C.M.S. "would be difficult to treat." The juvenile court's order does not misstate Henkel-Johnson's testimony.

The juvenile court's reference to Henkel-Johnson's statement that C.M.S. is minimally motivated was not central to the juvenile court's analysis of the fifth factor. The juvenile court devoted two pages of its order to the fifth factor. The juvenile court found that the punishment or programming available in the juvenile justice system is inadequate to treat C.M.S. "given the level of . . . violence involved in these crimes" and inadequate "to address [C.M.S.'s] behavior." The juvenile court relied primarily on the testimony of Jorgenson and Barber. The juvenile court also credited the testimony of Jorgenson and Henkel-Johnson, both of whom testified that the alleged offense is atypical for a juvenile. The juvenile court mentioned Henkel-Johnson's testimony concerning C.M.S.'s motivation to engage in treatment only in conjunction with its description of Jorgenson's

testimony that it is not possible to provide adequate treatment to C.M.S. in the juvenile system. The juvenile court's reference to Henkel-Johnson's testimony was appropriate. It also appears that the juvenile court would have made the same finding concerning the fifth factor even if it had not considered Henkel-Johnson's testimony concerning C.M.S.'s motivation to engage in treatment.

C.M.S. further contends that he could be adequately treated in the juvenile justice system. The juvenile court relied in part on Barber's testimony to find "that the punishment or programming in the juvenile system is inadequate given the level of violence involved in these crimes." Barber testified that if C.M.S. were given an EJJ designation, he would be treated in a juvenile residential-placement program for between 9 and 18 months and remain on probation until he was 21 years old. The juvenile court found that this disposition would not sufficiently address the seriousness of the offense of which C.M.S. is charged. Barber also testified that three of four juvenile treatment programs declined to accept C.M.S. for treatment into their programs. The juvenile court noted that the one program that agreed to conditionally accept C.M.S. is a non-secure, short-term program, which would provide insufficient security based on the charged offense. The juvenile court did not err in relying on Barber's testimony and determining that C.M.S. could not be adequately treated in the juvenile justice system.

C.M.S. also challenges Jorgenson's statement in her written report that C.M.S. is "hostile, arrogant, and defensive." Jorgenson met with C.M.S. twice and administered four assessments. Jorgenson testified that C.M.S. was "generally combative and uncooperative." She stated that, at times, he "refused to answer certain questions, even

though they [were] just about basic history.” She described C.M.S.’s attitude as “hostile, defensive, [and] guarded” and stated that his level of cooperation was significantly lower than and atypical to other juveniles. The juvenile court did not repeat these statements by Jorgenson. The juvenile court merely stated that Jorgenson testified that “treatment for [C.M.S.] would be more challenging” and that Jorgenson “did not believe there was adequate time or resources within the juvenile system to treat him.” The juvenile court did not err in the manner in which it relied on Jorgenson’s testimony.

Thus, the juvenile court did not err by finding that the fifth factor favors certification.

## **B.**

C.M.S. argues that the juvenile court erred in its ultimate finding that C.M.S. did not prove by clear and convincing evidence that public safety would be best served by a prosecution in juvenile court. He contends that the juvenile court should have given more weight to the third factor, which favors an EJJ proceeding.

In ruling on a certification motion, a juvenile court must balance the six statutory factors. *See J.H.*, 844 N.W.2d at 36; *In re Welfare of D.M.D.*, 607 N.W.2d 432, 437 (Minn. 2000). But two of the six factors—the first factor and the third factor—are most important. “A juvenile court must ‘give greater weight to the seriousness of the alleged offense and the child’s prior record of delinquency than to the other factors listed.’” *J.H.*, 844 N.W.2d at 36 (quoting Minn. Stat. § 260B.125, subd. 4). In this case, one of the two most important factors—the seriousness of the offense—favors certification, and the other—C.M.S.’s lack

of a prior delinquency record—favors an EJJ proceeding. C.M.S. argues that the juvenile court erred by placing more weight on the first factor than on the third factor.

With respect to the first factor, the juvenile court stated that the charged offenses were “unprovoked” criminal acts committed upon random teenaged victims in a public place. The juvenile court stated that the alleged crimes had a “horrific” impact on the victims. The juvenile court also noted that aggravating factors were present, including the use of a firearm, multiple forms of penetration on multiple victims, particular cruelty, and the presence of a child. *See* Minn. Stat. § 260B.125, subd. 4(1); Minn. Sent. Guidelines 2.D.3.b(1)-(14) (2016). The juvenile court stated, “It is difficult to imagine more heinous and serious crimes than those [C.M.S.] is accused of committing.” When discussing the second factor, the juvenile court stated that C.M.S.’s “culpability is very high.” The juvenile court stated that C.M.S. demonstrated a high level of criminal sophistication and planning or premeditation and that he initiated the sexual assaults and robberies.

With respect to the third factor, the juvenile court stated merely that C.M.S. had two prior charges, one for being a runaway and another for fleeing a police officer. The juvenile court found, without additional discussion, that the third factor favors an EJJ proceeding.

The relevant question is whether the juvenile court abused its discretion when it analyzed and balanced the six public-safety factors. The state argues that *In re Welfare of J.H.* and *In re Welfare of S.J.T.* support the juvenile court’s balancing of the factors. In each of those cases, the juvenile court determined that the seriousness of the alleged offense favored certification but that the prior-record-of-delinquency factor favored an EJJ proceeding. *See J.H.*, 844 N.W.2d at 36; *In re Welfare of S.J.T.*, 736 N.W.2d 341, 353-54

(Minn. App. 2007), *review denied* (Minn. Oct. 24, 2007). In *J.H.*, the juvenile court found that the charged offenses were “serious crimes” and “especially violent because [the victim] was forcibly removed from a car by several men, thrown onto a mattress, held down by several men, and then raped by a gang member” and that “the rape had a significant impact on” the victim. 844 N.W.2d at 36. In *S.J.T.*, the juvenile court found that the charged offense was “very serious,” that the juvenile used “threats, intimidation, and force” to sexually abuse the victim, that the abuse occurred “too many times to count,” and that the offenses “clearly affected” the victim. 736 N.W.2d at 353-54. The juvenile court, in each case, found that the juvenile had no prior record of delinquency. *See J.H.*, 844 N.W.2d at 36; *S.J.T.*, 736 N.W.2d at 354. Nonetheless, in each case, the juvenile court certified the juvenile for prosecution as an adult. *See J.H.*, 844 N.W.2d at 40; *S.J.T.*, 736 N.W.2d at 355. A juvenile court is not required “to ‘expressly weigh’ these two factors separately from the other public safety factors, or to ‘specifically delineate’ the impact of both of these factors on its certification determination.” *J.H.*, 844 N.W.2d at 36. Rather, a “juvenile court is only required to give greater weight to those two factors than the other factors” when determining whether public safety would be best served by a prosecution in juvenile court. *Id.*

Thus, the juvenile court did not clearly err in its allocation of weight to the first and third factors and did not abuse its discretion in its ultimate finding.

In sum, the juvenile court did not err by granting the state’s motion to certify C.M.S. for prosecution as an adult in district court.

**Affirmed.**